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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,287	12/31/2003	Jane Frances Heschmeyer	08116.0023.NPUS00	9611

7590 10/26/2010  
Steven J. Moore  
Kelley Drye & Warren LLP  
Intellectual Property Department  
400 Atlantic Street, 13th Floor  
Stamford, CT 06901-3229

EXAMINER
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STULII, VERA

ART UNIT	PAPER NUMBER
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1781

MAIL DATE	DELIVERY MODE
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10/26/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,287	<b>Applicant(s)</b> HESCHMEYER ET AL.	
	<b>Examiner</b> VERA STULII	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/08/2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 4, 14 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Western Communion Hosts in view of Salza (US 8,836,680).**

In regard to claims 1 and 14, Western Communion Hosts disclose the altar bread recipe (page 1). Western Communion Hosts disclose using 1/2 cup whole wheat flour, 1/2 cup unbleached white flour and 1/2 cup water for each loaf (page 1). Western Communion Hosts disclose combining and kneading until well mixed, kneading for at least 5-8 minutes, letting dough rest for 5-10 minutes, and kneading again (page 1). Western Communion Hosts discloses a need in gluten free altar bread (pages 1, 6) and gluten-free altar bread recipes that include ingredients other than wheat flour (soy or rice flour, potato starch, cornstarch, xanthan gum, etc. (Pages 6-7). However, Western

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Communion Hosts further discloses that communion hosts made from the substance other than wheat are invalid (page 5 bottom paragraph).

Salza discloses “the production of alimentary pastes which are substantially free of glutens and therefore of proteins, and which are especially suitable for the nourishment of persons suffering from chronic uraemia and other dysfunctions” (Col. 1 lines 13-22). Thus, Salza discloses producing gluten-free (protein-free) pasta suitable for individuals suffering from gluten intolerance. Salza discloses that the “object of the invention to supply a procedure producing a starch composition capable of being formed, as by extrusion, into any possible shape of alimentary paste, or pasta, such as spaghetti, macaroni, rigatoni, etc., such composition being mainly formed of a mixture of ungelatinized starch with gelatinized starch, the latter acting as a binder for the former” (Col. 1 lines 44-50). Salza discloses use of wheat starch (Col. 2 lines 21-22). Therefore Salza discloses substituting traditional pasta ingredients with a mixture of ungelatinized and pre-gelatinized wheat starch.

In summary, Western Communion Hosts discloses preparation of communion altar bread using traditional ingredients such as wheat flour and water, recognizes a problem of serving such bread to the gluten intolerant individuals and provides with alternative recipes containing alternative ingredients. However, these recipes are not applicable to the Communion breads, because of the use of wheat ingredients only requirement. Salza offers a solution to this problem. Salza discloses preparation of gluten-free pasta product by substituting traditional pasta ingredients with a mixture of ungelatinized and pre- gelatinized wheat starch. One of ordinary skill in the art would

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have been motivated to modify Western Communion Hosts in view of Salza and to substitute wheat flour mixture with ungelatinized and pre- gelatinized wheat starch mixture as taught by Salza. One of ordinary skill in the art would have been motivated to do so in order to produce a communion bread product suitable for individuals suffering from gluten intolerance. One of ordinary skill in the art would have been motivated to do so, since both references disclose a need for the gluten-free product. One of ordinary skill in the would have been motivated to do so, since substitution of wheat flour in Western Communion Hosts with ungelatinized and pre- gelatinized wheat starch of Salza would result in a product made solely of water and wheat ingredients that would satisfy strict communion bread requirement. In regard to the "wafer" recitation, it is noted that a host, as a portion of bread for Holy Communion is often served as a thin wafer. In regard to the amounts of starches and water, Salza discloses that the proportions of water to starch depend on the consistency of the final product (Col. 2 lines 11-14). Salza discloses 52-64 parts of water for 100 parts by weight of starch (Col. 1 lines 18-20). It is further noted, that Salza discloses dried product that further requires re-hydration for subsequent consumption. Therefore, one of ordinary skill in the art would have been motivated to increase amount of water used in order to produce a product that will not require further re-hydration and is ready for the immediate consumption. In regard to forming a homogeneous mixture of warm water, pregelatinized and non-gelatinized starch, Salza discloses forming a homogeneous mixture of water, pregelatinized and non-gelatinized starch (Col. 3 claim 1). Salza is silent as to the proportion of pregelatinized starch to the non-gelatinized starch (Col. 2

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lines 60-67). One of ordinary skill in the art would have been motivated to vary proportion of pregelatinized starch to the non-gelatinized starch in order to produce product having the same or similar characteristics to the gluten-containing counterpart.

In regard to the water temperature recitation in claims 1 and 5, it is noted that Salza discloses warm water in the starch mixture (Col. 1 lines 59-65). Salza discloses heating water with starch to the temperature of 60° and further adding non-gelatinized starch.

Western Communion Hosts further discloses rolling out dough and cutting or forming into a loaf 6-7 inches round (size of a 3-lb. coffee can) by 1/2 inch thick. Western Communion Hosts discloses scoring loaves with a scoring mold, place loaves on ungreased baking sheet, "baking at 375 to 425 degrees for approximately twenty to thirty minutes (depends on each oven, size of loaf and type of baking sheet - a cast iron skillet bakes more evenly and in less time than a cookie sheet)" (page 1). In regard to the amount of the pregelatinized and non-gelatinized starch mixture used for the preparation of the wafer, as noted above, a host, as a portion of bread for Holy Communion is often served as a thin wafer. The particular amounts of the starch mixture used and baking time would depend on the size and shape of the wafer desired. Thus, one of ordinary skill in the art would have been motivated to vary amount of starch mixture and baking time depending on the size of the final product desired. One of ordinary skill in the art would have been motivated to do so since use of wafers of different sizes was a well established fact in the art. One of ordinary skill in the art would

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have been motivated to vary baking time in order to produce the product having the same or similar characteristics to the gluten-containing counterpart.

### ***Response to Arguments***

Applicant's arguments filed 09/08/2010 have been fully considered but they are not persuasive.

On pages 9 and 10 of the Reply to the Final Office action mailed 06/08/2010, Applicants discuss previously stated rejection.

Further on pages 10-12 of the Reply, Applicants presents arguments regarding the need of emulsifier in the wafer composition. On page 11 of the Reply, Applicants state that:

Salza does not (with emphasis) teach the substitution of a mixture of ungelatinized and pregelatinized wheat starch but instead teaches the substitution with a mixture of ungelatinized, pregelatinized wheat starch and an emulsifier/monoglyceride.

Salza specifically describes the emulsifier. Salza even teaches why an emulsifier is needed –“..to promote dispersion of these two components [the ungelatinized and gelatinized starch], in the mixture, small amounts of monoglycerides of the alimentary fatty acids Of C14 to C18 are added as emulsifiers...”(Salza C1 lines 51-53).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In response to Applicants' arguments on pages 12 and 13 of the Reply, it is notes that Salza is note relied upon as a teaching of emulsifiers used in past products. Salza is relied upon as a teaching of substituting wheat flour as a traditional starch-

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containing pasta ingredient with a mixture of ungelatinized and pre-gelatinized wheat starch in order to produce gluten-free product suitable for individuals suffering from gluten intolerance. It was well known in the art to use emulsifiers in the farinaceous products for the various purposes (in case of Salza for the promotion of mutual dispersion of ungelatinized and pre-gelatinized wheat starch). However, clearly emulsifier is not used as a source of starch in the pasta composition. The source of starch is a mixture of ungelatinized and pre-gelatinized wheat starch. Therefore, emulsifier is not a part of the starch ingredient necessary to produce a protein-free product. Western Communion Hosts reference is relied upon as a teaching of preparation of communion altar bread using traditional ingredients such as wheat flour and water; and as a teaching of recognition of a problem of serving such bread to the gluten intolerant individuals by providing with alternative recipes containing alternative ingredients. Western Communion Hosts discloses preparation of communion altar bread using traditional ingredients such as wheat flour and water, recognizes a problem of serving such bread to the gluten intolerant individuals and provides with alternative recipes containing alternative ingredients. However, these recipes are not applicable to the Communion breads, because of the use of wheat ingredients only requirement. Salza offers a solution to this problem. Salza discloses preparation of gluten-free pasta product by substituting traditional pasta ingredients with a mixture of ungelatinized and pre-gelatinized wheat starch. One of ordinary skill in the art would have been motivated to modify Western Communion Hosts in view of Salza and to substitute wheat flour mixture with ungelatinized and pre-gelatinized wheat starch mixture as taught by Salza



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One of ordinary skill in the art would have been motivated to do so in order to produce a communion bread product suitable for individuals suffering from gluten intolerance. One of ordinary skill would have been motivated to do so, since both references disclose a need for the gluten-free product. One of ordinary skill in the would have been motivated to do so, since substitution of wheat flour in Western Communion Hosts with ungelatinized and pre- gelatinized wheat starch of Salza would result in a product made solely of water and wheat ingredients that would satisfy strict communion bread requirement.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vera Stulii/  
Examiner, Art Unit 1781